

DOWNEY BRAND LLP
MICHAEL J. THOMAS (Bar No. 172326)
APARNA RAJAGOPAL-DURBIN (Bar No. 218519)
555 Capitol Mall, Tenth Floor
Sacramento, CA 95814-4686
Telephone: (916) 444-1000
Facsimile: (916) 444-2100
E-mail: mthomas@downeybrand.com
E-mail: adurbin@downeybrand.com

Attorneys for Plaintiff
Nutrishare, Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Nutrishare, Inc., a California corporation,

Plaintiff,

v.

BioRx, LLC, an Ohio Limited Liability
Company,

Defendant.

Case No. 2:08-CV-01252-WBS-EFB

**DECLARATION OF REID A.
NISHIKAWA IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION**

Date: August 4, 2008
Time: 2:00 p.m.
Dept: Courtroom 5

I, REID A. NISHIKAWA, hereby declare as follows:

1. I am an individual residing in Fair Oaks, California. I make this declaration of my own personal knowledge, and if called to testify, could and would testify consistent with the facts stated herein.

2. I am a Doctor of Pharmacy and am employed by Nutrishare, Inc. (hereinafter "Nutrishare") as Coordinator, Clinical Services and Director of Research.

3. Within the past six months, BioRx, LLC's NutriThrive division has begun marketing to patients and physicians nationwide.

4. I was seriously concerned to recently discover that several physicians, with whom Nutrishare has a professional relationship involving patients, have become confused about the connection between Nutrishare and NutriThrive. Specifically:

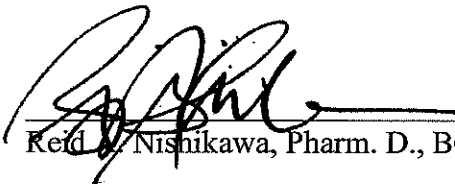
1 a. At the 2007 annual meeting of the Association for Gastrointestinal Motility
2 Disorders, Samuel Kocoshis, MD, from Cincinnati Children's Hospital while attending
3 this meeting in Burlington, Massachusetts, informed me that when he heard about
4 NutriThrive, he initially believed that NutriThrive was somehow related to Nutrishare, and
5 asked me for clarification regarding the relationship between the two entities.

6 b. On or about February, 2008, Leo Rodriguez, MD, from Massachusetts
7 General Hospital for Children, informed me that that he had been contacted by
8 NutriThrive representatives to arrange a meeting. He agreed to meet with them but asked
9 me who they were and if they were related to Nutrishare. I clarified that the two
10 companies were separate entities and shared no relationship.

11 c. On or about February, 2008, Alex Flores, MD, from Tufts Medical Center,
12 Floating Hospital in Boston, informed me that NutriThrive had contacted him and that he,
13 as well as his colleagues, were getting confused about the relationship between
14 NutriThrive and Nutrishare. Even after he met with NutriThrive representative, he called
15 me to ask me to clarify if there was any relationship between the two entities, I replied,
16 "There is no relationship".

17
18 I declare under penalty of perjury under the laws of the United States and the State of California
19 that the foregoing is true and correct to the best of my knowledge.

20 Dated this 24th day of June, 2008, at Elk Grove, California.

21
22 
23 Reid Nishikawa, Pharm. D., BCNSP, FCSHP